UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIA HENRY, *et al.*, individually and on behalf of all others similarly situated,	
Plaintiffs,	
v.	Case No.: 22-cv-00125
BROWN UNIVERSITY, *et al.*,	Hon. Matthew F. Kennelly
Defendants.	

DEFENDANTS' MOTION TO EXTEND THE DEADLINE
FOR THE PRODUCTION OF STRUCTURED DATA 30 DAYS

The Defendants hereby move pursuant to Fed. R. Civ. Pro. Rule 16(b)(4) and Local Rule

16.1, to amend the case management order entered on September 8, 2022 (Dkt. 195) by extending

the deadline for their production of structured data requested in this case by Plaintiffs in their First

Set of Document Requests an additional 30 days, from the current deadline of February 13, 2023

to March 13, 2023. As explained below, most Defendants are currently in the process of extracting

the requested data from their systems (or will be in a position to do so promptly upon entry of the

requested FAFSA order). However, the process – unique to this case – of utilizing a vendor to

anonymize and assign common identifiers to student information across each of the Defendants'

data sets – will require additional time to complete. In support of this Motion, Defendants state as

follows:

1.   On September 19, 2022, Plaintiffs served Defendants with requests for production

which included requests for individual student data considered in the review of their admissions

applications and calculation of their financial aid packages. Included in these RFPs were requests

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for "any other data collected for the purpose of, considered in, or relied upon for making Financial Aid determinations, including but not limited to the packaging of Financial Aid" and "any other data considered in connection with the Applicant's application." *See, e.g.*, Plaintiffs First Set of Requests for Production Nos. 2(i) and 5(q). Collectively, these requests call for production of voluminous data relating to millions of students extending back over twenty years.

2.   Due to the significant breadth of student data collected by the admissions and financial aid databases used by Defendants over the time period of Plaintiffs' requests, the parties met and conferred after Defendants responded to these requests in November and discussed which data fields Plaintiffs specifically needed. Those meet and confer communications continued until late December, 2022, when by which time the IT and other data personnel were largely unavailable at the Defendants' universities due to the holidays. Defendants have been and continue to work diligently to collect, process and anonymize all of that data, but it has become clear that work cannot be completed by February 13, 2023. Hence, Defendants request an extension of 30 days, to March 13, 2023, for Defendants as a group to complete production of the data. In the meantime, individual Defendants will produce datasets on a rolling basis as they are processed and anonymized between now and March 13.

3.   Defendants have been working diligently with their clients over the past two months to identify and pull the data and/or data populations requested by Plaintiffs. Unfortunately, the complexity and variety of systems used by each Defendant over time prevents the application of a simple "one size fits all" solution. Data analysts for each Defendant are required to build out queries seeking specific data fields in order to process and pull the amount of data requested by Plaintiffs. This process has necessarily been iterative, with multiple samples having to be run and reviewed by counsel in order to verify that the information requested has been included and to

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provide guidance on additional fields of data that need to be pulled. Many of these databases are technologically incapable of pulling "all data" because an "all data" request often results in the system crashing. Furthermore, querying the system for the specific data fields of all applicants and all admitted students of each Defendant takes several days at a time and often requires the querying of multiple databases since the platforms Defendants have used changed over the course of the last two decades. In addition, certain of the legacy systems are no longer active and require additional work to extract responsive data.

4.   Many Defendants expect to produce multiple different data sets because different offices (e.g., admissions and financial aid) maintain their own databases of applicant or student data.[1] Some of these databases are housed in different database systems. After sampling of the fields available in these various systems, certain Defendants were only able to provide a substantive list of data fields to their clients' admissions and financial aid offices by the end of January.

5.   In addition to the challenges Defendants face in pulling these structured data, Defendants must also de-identify the Personally Identifiable Information ("PII") contained in the admissions and financial aid data sets. *See* Nov. 22, 2022 Confidentiality Order, Dkt. 254(d)(i) ("All structured data comprising or containing Education Records or Personally Identifiable Information ('Structured Education Data') produced in this case shall be deidentified in accordance with FERPA…").

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[1] As the Court is aware, six Defendants filed a Motion for a Protective Order (Dkt. 276) on January 13, 2023, seeking an order that they not be required to produce admissions or development documents or data relating to the Section 568 defense, which they dropped from their answers to the Second Amended Complaint. Those six Defendants are preparing to produce structured data from their financial aid offices, but are not currently preparing to produce admissions data.

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6.   By December 2022, and in anticipation of the February 13, 2023 deadline, Defendants identified an outside vendor to assist with de-identifying the Defendants' Structured Education Data by removing the PII and developing unique, randomized student codes to substitute in its place so that the data can be compared across schools. The de-identification process can only be done by a single vendor common to all Defendants since the vendor requires each Defendant's data to correctly match applicants across schools to assign a unique code to that individual..

7.   The de-identification process involves the development and use of a computer algorithm as well as manual matching when the PII of one university does not precisely match the PII of another university due to (1) a lack of a common identifier across all data provided by each Defendant, (2) missing data in some schools' historical datasets, and (3) inconsistent and erroneous data (i.e., wrong social security numbers, date of birth, inconsistent spelling on names and addresses). For example, some of the Defendants' databases contain social security numbers; some do not. Also, some social security numbers are mistyped, and others included the wrong social security numbers for a particular student — because we are comparing data across multiple Defendant datasets our vendor can correct these data errors that would usually be impossible to correct. Moreover, the data the vendor is processing and analyzing is large and complex — for example, one school produced 46 separate data tables including more than 46 million records and 5,000 different data fields (some of which contain PII). This manual process, as well as the refinement of a computer algorithm that works across all Defendants' applicant and student populations is both complex and time-consuming, particularly given the size of those populations and the complexity of the databases produced by individual Defendants. This global de-

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identification process was not contemplated at the time the Court set the existing February 13 deadline on September 8, 2022.

8.   Defendants estimate that they have responsive, individual data on millions of individuals who applied to Defendants, as well as financial data for subsequent years for enrolled students.

9.   As of the date of the filing of this Motion, Defendants vendor has validated the algorithm it is using for this case and de-identified PII for three of the seventeen universities. The vendor has also completed the work for certain of the data for additional Defendants. A lot more processing and work is needed, however, before the PII of the other remaining Defendants will be de-identified and replaced with a randomized code for each student in all of the data sets being collected. Once the randomized codes are generated, each Defendant will then need to remove the PII from their anticipated structured data productions.

10.   Due to the complexity in pulling the Structured Education Data from the Defendants' databases, some Defendants have been delayed delivering all or portions of their student data to the outside vendor.

11.   On February 3, 2023, Defendants received an update from the outside vendor handling the de-identification and Defendants conferred with each other to assess their collective status. While some Defendants will be able start producing their de-identified structured data on February 13, 2023, most will not be in that position.

12.   Upon learning of this logjam in the de-identification process and being able to assess for the first time how much more time would be needed, Defendants contacted Plaintiffs' counsel on February 3, 2023 to alert them of the logjam and that Defendants would not all meet the February 13th deadline. During a meet a confer call held on February 6, 2023 with Plaintiffs'

Counsel, Robert Gilbert and Robert Litan, Plaintiffs informed the undersigned that they would take no position on this Motion and confirmed that position in an email later that evening.

13.   Defendants believe that it will take another month for the vendor to complete the Structured Education Data de-identification process for all seventeen Defendants. Each Defendant commits to producing their Structured Education Data on a rolling basis as soon as the de-identification process is complete for a particular data set.

14.   Extending Defendants' deadline to substantially complete production of Structured Data to March 13, 2023 will not prejudice Plaintiffs. Fact discovery does not close until January 31, 2024 and extending the deadline to produce structured data is unlikely to impact the completion of Expert Reports, which are due by March 15, 2024. *See* Dkt. 195. Furthermore, Plaintiffs have requested additional structured data from the admissions office in their Second Set of Requests for Production, which are not due until July 31, 2023.[2]

15.   For these reasons, Defendants respectfully request the Court extend the deadline for substantial completion of structured data to March 13, 2023. A copy of a proposed Order granting Defendants' Motion has been e-mailed to the Judge's Chambers per his Standing Order.

Dated: February 7, 2023   Respectfully submitted,

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[2] Certain Defendants who did not object to the structured data requested in the Second Set of RFPs will likely even be able to produce these data before July 31, 2023.

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